

REMARKS / ARGUMENTS

Status of Claims

Claims 1-19 are pending in the application and stand rejected. Applicant has amended Claim 1, and has added new Claim 20, leaving Claims 1-20 for consideration upon entry of the present Amendment.

Applicant respectfully submits that the rejections under 35 U.S.C. §112, first paragraph, 35 U.S.C. § 112, second paragraph, and 35 U.S.C. §103(a), have been overcome, that no new matter has been entered, and that the application is in condition for allowance.

Rejections Under 35 U.S.C. §112, First Paragraph

I: Claims 1-18 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

II: Claims 1-18 are further rejected under 35 U.S.C. §112, first paragraph for reciting a new matter.

Appellant respectfully disagrees with these rejections for the following reasons.

I: Regarding the written description rejection

(a) The Examiner comments that the phrase “so as to conform” does not provide sufficient description of “how conforming” the underlying elements should be achieved (Office Action, page 2).

(b) The Examiner further comments that “There is not enough description to help a person having ordinary skill in the art to envision that Applicant was in possession of the way of adapting the second layer to conform to the underlying exfoliating elements thereby forming a plurality of protuberances.” (Office Action, pages 2-3).

Regarding (I)(a):

While Applicant respectfully disagrees that the specification is missing sufficient written description of “how conforming” conforming needs to be, as the term “conforming” as used herein would be well recognized by one skilled in the art to mean

“having a similar shape”, without the need to describe in excruciating detail every contour achieved by the conforming second layer, Applicant has nonetheless amended Claim 1 to remove the word “conforming” and to include the phrase “not masking the effect of”, which Applicant submits is fully described in the application as filed, such as at page 4, lines 5 and 20, for example. In view of the Examiner having already recognized and considered this phrase (see Office Action, page 2), Applicant submits that no new matter has been added, and that no further consideration and search would be required. Accordingly, Applicant respectfully requests entry and consideration of this amendment, and with such, respectfully submits that Claim 1 is in full compliance with 35 USC §112, first paragraph, and requests withdrawal of this rejection.

Regarding (I)(b):

Applicant respectfully disagrees with the Examiner, as the specification clearly describes the second layer 6 being a fibrous layer having *a lower basis weight* than the first fibrous layer 2, which results in the underlying exfoliating elements having an exfoliating effect on the skin with movement dynamics (page 2, lines 1-6). As such, Applicant submits that the written description as filed is clear on its face “of the way of adapting the second layer to conform to the underlying exfoliating elements”.

II: Regarding the new matter rejection

(a) The Examiner comments that the term “protuberances” is used in the specification to describe the protrusions of Fig. 4, and is used in the claims without limitation. Office Action, page 3.

(b) The Examiner comments that Applicant should specifically point out support for the generic concept of Claim 1 using the expression “protuberances” where it reads on all embodiments. Office Action, page 3.

Regarding (II)(a):

Applicant respectfully disagrees that inclusion of the term “protuberances” qualifies as “new matter”, as the originally filed specification clearly includes this term to describe the exfoliating elements being arranged in any continuous or broken pattern that produces a contour clearly marked by alternating “protuberances” and flat surfaces (page

5, lines 20-22). Accordingly, Applicant respectfully requests reconsideration and withdrawal of this “new matter” rejection.

Regarding (II)(b):

On page 3, lines 23-24, continuing on page 4, line 1, Applicant clearly describes the invention with reference to Figure 1 presenting an illustration of *a structure of the pad* claimed for invention, and with reference to Figures 2-4 illustrating *alternative structures of the pad*. As such, the written description is clearly intended for the embodiments of Figures 2-4 to be alternatives to the embodiment of Figure 1, with any common elements and common features clearly being used in a non-limiting way. The non-limiting use of the expression “protuberances”, as used with reference to the alternative embodiment depicted in Figure 4 (page 5, lines 19-23), is clearly demonstrated by the very language found on page 5, lines 19-23, which states, “for example, the [exfoliating] elements may be arranged... in *any other continuous or broken pattern*. A contour clearly marked by *alternating protuberances and flat surfaces* is thus obtained. *As is the other embodiments [Figures 1-3]*, they [the exfoliating elements] are kept by the upper layer [second layer] which is lighter than the [bottom or first] layer”. Here, and consistent with the specification as a whole, Applicant not only intended but purposefully described the “protuberances” of the embodiment of Figure 4 with association to all other embodiments of Figures 1-3. To repeat, Applicant clearly intended the embodiments of Figures 2-4 to be alternatives to the embodiment of Figure 1, and as such, clearly provides support for the generic concept of Claim 1 that uses the expression “protuberances”.

In view of all of the foregoing, Applicant respectfully submits that the specification provides general guidelines as to the scope of the invention such that one of ordinary skill in the art would know what was meant, and that the subject matter of the invention has been described and is supported in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention, and therefore respectfully requests reconsideration and withdrawal of all rejections under 35 U.S.C. §112, first paragraph.

Rejections Under 35 U.S.C. §112, Second Paragraph

Claims 1-18 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. More specifically, the Examiner comments that the phrase “sufficiently fine” as used in Claim 1, and the phrase “fine enough” as used in the disclosure, are not sufficiently explained.

Applicant has amended Claim 1 to remove the phrase “sufficiently fine” thereby rendering this rejection moot.

In view of the foregoing, Applicant respectfully submits that the claimed subject matter is described in such a manner that reasonably conveys to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention, which Applicant submits is claimed in definite terms. Accordingly, Applicant respectfully requests reconsideration and withdrawal this rejection, which Applicant considers to be overcome.

Rejections Under 35 U.S.C. §103(a)

Claims 1-19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Puvvada et al. (U.S. Patent No. 6,902,338, hereinafter Puvvada) in view of Michaud (U.S. Patent No. 7,037,866, U.S. Publication No. 2004/0023584, hereinafter Michaud) in view of Vayrette (U.S. Publication No. 2002/0107528, hereinafter Vayrette).

Applicant overcomes these rejections for the following reasons.

Applicant respectfully submits that the obviousness rejection based on the References is improper as the References fail to teach or suggest each and every element of the instant invention in such a manner as to perform as the claimed invention performs. For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). The Examiner must meet the burden of establishing that all elements of the invention are taught or suggested in the prior art. MPEP §2143.03.

Claim 1 recites, inter alia:

“...a second fibrous layer of lower basis weight than the first fibrous layer...”

In alleging obviousness, the Examiner comments that Puvvada discloses the two layers (Office Action, page 5, lines 8 and 14, and page 6, lines 3 and 8).

Applicant respectfully submits that Puvvada necessarily cannot disclose the two layers as claimed, which necessarily require the second fibrous layer to be of lower basis weight than the first fibrous layer, as Puvvada discloses a single body 14, 44 of the bag holder 10, 40. Thus, the elements 24, 26, 28, 30 contained within the bag holder 10, 40 are not disposed between “a second fibrous layer of lower basis weight than the first fibrous layer”. As such, Applicant submits that Puvvada fails to disclose or teach all that it is alleged to disclose or teach.

The Examiner applies Michaud for its teaching of a first layer 12, a second layer 14, and a third layer 16. As stated in Applicants Amendment paper dated March 9, 2010, Applicant submits that Michaud is absent definitive *protuberances* formed by *underlying* exfoliating elements as claimed, and respectfully submits that Michaud is still absent such disclosure or teaching. In fact, Applicant finds Michaud to disclose and teach that “[a]reas in between where the water jets impact the web 18 [outer second layer 14] form a pattern of raised areas or dimples 40 which provide a textured or roughened feel to the outer surface 34 of the web 18, and thus the to the second [outer] layer 14 of the nonwoven fabric 10.” See Michaud, col. 4, lines 22-26. As such, Applicant respectfully submits that Michaud fails to cure the deficiencies of Puvvada in this respect, as Michaud does not disclose or teach an intermediate layer 16 being an exfoliant, as alleged by the Examiner on page 7 of the Office Action. The Examiner comments that layer 16 of Michaud “is rough and is *considered* as exfoliant in the fabric and is present in the middle layer.” (Office Action, page 7, emphasis added). In respectful disagreement with the Examiner, just because the Examiner “considers” layer 16 of Michaud to be an exfoliant, does not unambiguously establish a prima facie case of obviousness, as the Examiner has not established where Michaud itself discloses or teaches, as opposed to “considers”, layer 16 to be an exfoliant forming protuberances at the second layer.

Dependent claims inherit all of the limitations of the respective base claim and any intervening claim.

Regarding Claim 14, the Examiner alleges that it would have been obvious to convert the Puvvada pouch into a three-layer pouch using the Michaud sheet. Office Action, page 9. Applicant respectfully disagrees, as the Michaud sheet has a first side that is different from the second side, the effect of which being completely lost in the Puvvada pouch as one of the outer layers would always be on the inside of the pouch, which is completely contrary to the claimed invention. As such, Applicant submits that there is no motivation to modify the Puvvada pouch with the material of Michaud to arrive at the claimed invention.

Regarding Vayrette, in view of Vayrette not being applied against Claim 1, and in view of Vayrette failing to cure the deficiencies of Puvvada and Michaud with respect to Claim 1, Applicant submits that Puvvada in view of Michaud and Vayrette still fails to disclose, teach or suggest each and every element of the claimed invention arranged so as to perform as the claimed invention performs.

In addition to the foregoing, Applicant finds no motivation or teaching in any of the References to modify Puvvada in view of any respective secondary Reference to arrive at the claimed arrangement of elements without disturbing the performance characteristics and intended purpose (a pouch holding a toilet bar and permitting water and dissolved toilet bar material to pass through the pouch (col. 10, lines 52-56)) of the art being modified (Puvvada).

Furthermore, Applicant submits that any modification of Puvvada (the primary reference being modified) to arrive at the claimed invention would require substantial reconstruction and redesign of Puvvada, as Puvvada does not disclose or teach ***a second fibrous layer of lower basis weight than the first fibrous layer, with exfoliating elements distributed therebetween.*** Such substantial reconstruction and redesign of a prior art being modified falls wholly short of teaching, suggesting or motivating one skilled in the art to arrive at the claimed invention without using the claimed invention as a road map, which in and of itself is an impermissible use of hindsight.

In view of the foregoing, Applicant submits that the References fail to teach or suggest each and every element of the claimed invention and are therefore wholly inadequate in their teaching of the claimed invention as a whole, fail to motivate one skilled in the art to do what the patent Applicant has done, fail to recognize a problem recognized and solved only by the present invention, fail to offer any reasonable expectation of success in combining the References to perform as the claimed invention performs, fail to teach a modification to prior art that does not render the prior art being modified unsatisfactory for its intended purpose, fail to teach a modification to prior art that does not require substantial reconstruction and redesign of the prior art being modified, fail to teach a modification to prior art absent the use of hindsight, and discloses a substantially different invention from the claimed invention, and therefore cannot properly be used to establish a prima facie case of obviousness. Accordingly, Applicant respectfully requests reconsideration and withdrawal of all rejections under 35 U.S.C. §103(a), which Applicant considers to be overcome.

Regarding New Claim 20

Applicant has added new Claim 20 to capture originally disclosed but unclaimed subject matter. No new matter has been added as antecedent support can be found in the originally filed application such as at page 4, line 4, and page 5, line 20, which collectively disclose exfoliating elements spaced apart between first and second layers and held in place by the non-masking second layer. Applicant submits that Claim 20 is allowable for at least a first reason that it depends from an allowable base claim, and/or for at least a second reason that the prior art relied upon does not disclose, teach or suggest the invention as claimed. Accordingly, Applicant respectfully requests notice of allowance of at least Claim 20.

In light of the foregoing remarks and amendments, Applicant respectfully submits that the application is now in condition for allowance. Such action is therefore respectfully requested.

If a communication with Applicant's Attorneys would assist in advancing this case to allowance, the Examiner is cordially invited to contact the undersigned so that any remaining issues may be promptly resolved.

The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 06-1130.

In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above-identified Deposit Account.

Respectfully submitted,

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